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10 Attorneys for Defendant:
CARLOS E. KEPKE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,
16 Plaintiff,
17
18 v.
19 CARLOS E. KEPKE,
20 Defendant.

Case No. 3:21-CR-00155-JD

**DECLARATION OF GRANT P. FONDO
IN SUPPORT OF CARLOS KEPKE'S
MOTION TO COMPEL PROFFER
MATERIALS AND STATEMENTS**

Date: October 17, 2022
Time: 10:30 a.m.
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

DECLARATION OF GRANT P. FONDO

I, Grant P. Fondo, declare as follows:

1. I am a partner with the law firm Goodwin Procter LLP and a member of good standing of the bar of this Court. I represent Defendant Carlos E. Kepke (“Mr. Kepke”) in the above-captioned matter. I submit this Declaration in support of Mr. Kepke’s Motion to Compel Proffer Materials and Statements. Unless stated otherwise, this declaration is based on my personal knowledge, and if called as a witness I could and would testify as follows:

2. On February 3, 2022, March 1, 2022, April 12, 2022, and June 1, 2022, pursuant to Criminal Local Rule 16-1(a), counsel for Mr. Kepke and the government met and conferred regarding the government's discovery obligations as to the Proffer Materials and Statements. Attending these conferences were: Grant P. Fondo, Nicole J. Kim, Galen A. Phillips (only present at the February 3, 2022 conference), and Richard M. Strassberg, attorneys for Mr. Kepke; and Assistant United States Attorneys Christopher Magnani, Michael Pitman, and Corey Smith.

3. Counsel for the defense and the government discussed the government's discovery obligations with respect to Mr. Smith's Proffer Materials and Statements. The government agreed to produce some discovery, such as presentation exhibits and the Summary Letter, but the government has not agreed to produce any more documents or categories of documents. This disputed matter thus requires the determination of the Court.

4. Attached hereto as **Exhibit A** is a true and correct copy of Robert F. Smith's Non-Prosecution Agreement dated October 9, 2020.

5. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Grant P. Fondo to Michael G. Pitman dated June 30, 2021.

6. Attached hereto as **Exhibit C** is a true and correct copy of a letter from Grant P. Fondo to Michael G. Pitman dated March 20, 2022.

7. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Corey Smith to Grant P. Fondo dated August 12, 2022.

8. Attached hereto as **Exhibit E** is a true and correct copy of an email from Nicole Kim to Michael G. Pitman, et al., dated August 29, 2022.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on September 9, 2022 in East Falmouth, Massachusetts.
3

4 Dated: September 9, 2022

GOODWIN PROCTER LLP

6 By: /s/ Grant P. Fondo

7 GRANT P. FONDO (SBN 181530)

8 *GFondo@goodwinlaw.com*

9 **GOODWIN PROCTER LLP**

10 Attorneys for Defendant:

11 CARLOS E. KEPKE

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the
14 United States District Court for the Northern District of California by using the CM/ECF system
15 on **September 9, 2022**. I further certify that all participants in the case are registered CM/ ECF
16 users and that service will be accomplished by the CM/ECF system.

17 I certify under penalty of perjury that the foregoing is true and correct. Executed on
18 **September 9, 2022** in East Falmouth, Massachusetts.

19 /s/ Grant P. Fondo

20 GRANT P. FONDO